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Ken Kirk

February 14, 2014

Nancy Stoner

Acting Assistant Administrator, Office of Water

U. S. Environmental Protection Agency (EPA)

1200 Pennsylvania Ave., NW.

Washington, DC 20460-0001

Via Electronic Mail: Stoner.Nancy@epamail.epa.gov

Dear Nancy,

Thank you for your letter of January 28 responding to NACWA's request for public input as EPA considers the three petitions submitted on July 10, 2013 to EPA Regions 1, 3, and 9 asking the respective Regional Administrators to invoke EPA's "residual designation authority" (RDA) and require Clean Water Act (CWA) discharge permits for certain sites discharging stormwater to impaired waterways. NACWA appreciates EPA's continued dialogue with municipal groups regarding these petitions. NACWA represents permitted municipalities and stormwater utilities located in Regions 1, 3 and 9, and our members are keenly interested in the possible outcomes of these petitions.

NACWA fully agrees with the petitioners' concept that the regulatory burden of attaining water quality standards is being inordinately borne by municipal stormwater dischargers subject to NPDES permits. Accordingly, any new approach to stormwater regulation – including the RDA concept – that would place more responsibility for managing stormwater on the large industrial and commercial property owners responsible for creating the majority of runoff and ease the burden on municipal separate storm sewer systems (MS4s) is worthy of consideration. NACWA's primary concerns with the RDA approach lie in the details of how it would be implemented and what the potential unintended consequences on MS4s might be. You indicate in your January 28 letter that EPA will "accept public comment on any proposed designation before making a final designation and requiring a permit". While NACWA cannot take a formal position on any potential designations until they are made public for review, and will submit comments on the proposed designations should the occasion arise, we would like to provide some initial thoughts and considerations on the petitions while final determinations are being deliberated. In short, we believe the RDA concept has the potential to benefit municipal separate storm sewer system (MS4) utilities if implemented in an appropriate way. But we also have some concerns about the RDA approach, especially regarding how EPA may assign administrative responsibility for permitting a new class of stormwater dischargers.

The National Stormwater Quality Database data cited within the petitions indicates that urban stormwater significantly impacts water quality. Existing regulatory controls are in place to address most certain sources of urban stormwater pollution, most notably through the states' MS4 and industrial stormwater programs. As we see it, the petitions do not call for any additional regulation on existing MS4 permittees, but instead focus on permits for currently unregulated commercial, industrial, or institutional dischargers. To the extent EPA's response and new permitting requirements focus solely on large, privately owned stormwater dischargers (such as shopping centers, strip malls, airports, and large industrial areas) contributing to water quality impairment, that are not currently regulated, such a permitting scheme may reduce existing stormwater pollution loadings and could provide a more equitable distribution of the regulatory and economic costs of managing stormwater between MS4s and private commercial/industrial land owners.

The Association's main concern is how EPA may assign administrative responsibility for permitting these dischargers. NACWA would be opposed to any efforts that might require existing MS4s to carry out additional monitoring and/or enforcement duties related to RDA-based stormwater permits, as those utilities are already responsible for complying with a variety of CWA regulations at steep costs and would have no standing to enforce permits outside of their boundaries. The petitions may also have unintended consequences, like potential impacts to existing municipal stormwater utilities and fee programs, and EPA should consider how implementation of RDA would impact the full suite of local stormwater control efforts.

Additionally, NACWA is concerned about the vague and potentially overly broad categories of sources outlined in the petitions for RDA regulation. The petitions request that all non-de minimis discharges be permitted "from impervious surfaces associated with industrial, institutional and commercial sites" in impaired watersheds. The petition employs a vague definition of what industrial, institutional and commercial sites may be. While NACWA understands that the petitioners intended the implementation of the RDA to be flexible, we are concerned that the definition of "commercial, industrial, or institutional" properties as used in the petitions is unnecessarily broad and could include some municipal properties. The designation process undertaken by EPA, should they grant the petitions, would need to define institutional to ensure municipal properties are exempted.

The coalition of groups which filed the petitions, led by American Rivers, the Natural Resources Defense Council (NRDC), and the Conservation Law Foundation (CLF), have engaged NACWA and other municipal groups in conversation on the petition content and possible consequences. These conversations have been constructive and helpful, and we appreciate the petitioners' outreach. During our discussions with the petitioners, it has become clear they believe that stormwater runoff from non-regulated sources is a major source of water quality impairment around the nation. It is also clear that the petitioners believe municipalities and MS4s are unfairly carrying the majority of the regulatory and economic costs related to increased stormwater controls. This is something to which our stormwater members would wholeheartedly agree.

NACWA sees both the possible benefits and drawbacks of this RDA approach, but believes with thoughtful and targeted execution, exercising the Agency's RDA could improve our members' ability to achieve water quality by controlling stormwater discharges outside of their regulatory purview. We thank you for considering this feedback and welcome the opportunity to comment once any final determinations have been made. Please

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contact Brenna Mannion, Regulatory Affairs Manager at 202.533.1839 or bmannon@nacwa.org if you would like to discuss any of these comments further.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is stylized with a large "K" and a cursive "Kirk".

Ken Kirk
Executive Director

Cc: Curt Spalding, Regional Administrator, USEPA Region 1
Shawn Garvin, Regional Administrator, USEPA Region 3
Jared Blumenfeld, Regional Administrator, USEPA Region 9
Deborah Nagle, Director, Water Permits Division, USEPA

